

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

**5:01-CR-113
(FJS)**

RAMON BRITO,

Defendant.

APPEARANCES

**OFFICE OF THE UNITED
STATES ATTORNEY**
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Syracuse, New York
Attorneys for the United States

OF COUNSEL

LISA MARIE FLETCHER, AUSA

RAMON BRITO
P.O. Box 1000
White Deer, Pennsylvania 17887
Defendant *pro se*

SCULLIN, Chief Judge

ORDER

On December 7, 2005, Defendant Ramon Brito filed a "Motion Requesting An Out-of-Time Appeal." *See* Dkt. No. 580. On January 6, 2006, the Government filed a letter in opposition to that motion. *See* Dkt. No. 583. The Government asserts that the Court should deny Defendant's motion for two reasons: (1) Defendant has already moved in the United States Court of Appeals for the Second Circuit to reinstate his appeal and that Court denied his motion and (2) this Court lacks jurisdiction to grant Defendant's motion under Rule 4(b) of the Federal Rules of Appellate Procedure because Defendant has already appealed and the time period for filing a late

notice of appeal expired long ago. *See id.*

Rule 4(b) of the Federal Rules of Appellate Procedure provides, in pertinent part, that

[i]n a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

- (i) the entry of judgment or the order being appealed; . . .

* * * * *

Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Rule 4(b)(1)(A), (b)(4) of the Federal Rules of Appellate Procedure.

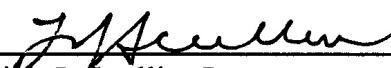
Defendant is not entitled to the relief he seeks under Rule 4(b) because, among other things, he has already filed a notice of appeal. *See* Dkt. No. 508. In addition, upon the motion of his appellate attorney, the Second Circuit granted his motion to withdraw that appeal. *See* Dkt. No. 561. There is nothing in Rule 4(b) that would permit this Court to grant Defendant an opportunity to file a second appeal. Finally, on December 15, 2005, the Second Circuit entered an order denying Defendant's motion to "reinstate out-of-time appeal."

Accordingly, the Court hereby

ORDERS that Defendant's motion requesting an opportunity to file an out-of-time appeal is **DENIED**.

IT IS SO ORDERED.

Dated: February 11, 2006
Syracuse, New York



Frederick J. Scullin, Jr.
Chief United States District Court Judge